IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

Bail Appl..No. 5532 of 2007()

CRIME NO. 380/07 OF THIRUVALLA POLICE STATION
CP.100/2007 of J.M.F.C.,THIRUVALLA

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PETITIONER/ACCUSED:

VIDYADHARAN, AGED 37,
S/O. PAPPAN, KOCHUPARAMBIL HOUSE, KUTTOOR P.O.

BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR
SRI.T.P. PRADEEP

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5532 of 2007

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Dated this the 12th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations, inter alia, under Section 308 I.P.C. Investigation is complete. Final report has already been filed. Cognizance has been taken. Committal proceedings has been registered. The petitioner finds a warrant of arrest issued by the learned Magistrate chasing him. The petitioner prays that directions under Section 438 Cr.P.C. may be issued in his favour.

2. The learned Prosecutor opposes the application. He submits that there are no circumstances to justify the invocation of the powers under Section 438 Cr.P.C. in favour of the petitioner.

4. I find merit in the opposition by the learned Prosecutor. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (AIR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in a pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any

compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

5. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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